



Date: March 4, 2013

To: Thomas J. Bonfield, City Manager
Through: Patrick Baker, City Attorney
From: Richard Weintraub, Senior Assistant City Attorney
Subject: Updates and corrections to City Code and resolutions

Executive Summary

Out-of-date provisions or errors have found their way into the City Code and resolutions. This agenda item is intended to bring to the City Council the opportunity to update and correct many of them. Each of the paragraphs in the **Issues and Analysis** portion of this memo explains what is recommended and the reasons for the recommendation. More detail can be found in the proposed ordinances and resolutions, which are the seventeen attachments.

Recommendation

The City Attorney's office recommends that the City Council adopt the proposed ordinances and resolutions.

Issues and Analysis

- 1) Most ordinances are codified, that is, placed in the city code. The City Code can exempt ordinances from that rule and currently does so for ordinances that redefine or rearrange election ward lines and boundaries. It is more convenient for persons interested in ward boundaries to be able to find the ordinances in the City Code, so this ordinance places them in the City Code. It repeals City Code section 1-3(d). The proposed ordinance is **Attachment 1, ORDINANCE TO REPEAL THE EXEMPTION FROM CODIFICATION OF ORDINANCES THAT REDEFINE OR REARRANGE ELECTION WARD LINES AND BOUNDARIES.**
- 2) The first attachment corrects a typographical error in referring to the UDO, by revising City Code section 1-3(e)(4). The proposed ordinance is **Attachment 2, ORDINANCE TO CORRECT REFERENCE IN CITY CODE SECTION 1-3 TO THE UNIFIED DEVELOPMENT ORDINANCE.**
- 3) On November 21, 2011 the Council reassigned precincts to the election wards in order to accommodate the 2010 census. City Code section 2-21 should be revised to reflect those changes. The November 21, 2011 action can be repealed because it would be incorporated into section 2-21. The proposed revision to section 2-21 continues the practice from the current section 2-21 to assign land outside the City limits to election wards so that if they are annexed, they will automatically be assigned to an election ward. The City Council may revisit any of these decisions, but it is advisable to have a rule in place to cover contingencies. The proposed ordinance is **Attachment 3, ORDINANCE RESPECTING THE ASSIGNMENT OF TERRITORY TO ELECTION WARDS.**
- 4) The City could operate its own animal control program with its own set of animal control ordinances. However, the long-standing practice has been to let county ordinances operate

throughout the city, and to let county staff run the program. To make this happen, the City Council needs to adopt resolutions making the county ordinances apply. Nearly all of the City is in Durham County, but small portions of the City are located in the counties of Orange and Wake. For all three counties, the City Council has made the counties' animal control ordinances applicable within the portions of the City located in the respective counties. Since that was last done, the animal control ordinances of Wake and Durham have been amended by the boards of commissioners of the two counties. The Orange County board of commissioners has made no changes to the Orange County animal control ordinance.

Adoption of the two resolutions will keep the county ordinances up-to-date inside the City's boundaries. The proposed resolutions are **Attachment 4**, (1) RESOLUTION TO MAKE AMENDMENTS TO THE DURHAM COUNTY ANIMAL CONTROL ORDINANCES APPLY IN THE CITY OF DURHAM and (2) RESOLUTION TO MAKE AMENDMENTS TO THE WAKE COUNTY ANIMAL CONTROL ORDINANCES APPLY IN THE CITY OF DURHAM.

- 5) City Code section 18-59(c) is intended to prohibit a firm, after the city and the firm have signed a contract, from making unauthorized changes that could improperly affect the Equal Business Opportunity Program participation plan. However, that City Code section refers to rejection of a bid or proposal, and could mislead a reader into thinking that it pertains to the time before the contract is signed. After the contract is signed, the applicable portions of the bid or proposal may be made a part of the contract, and there is no longer a pending bid or proposal. Therefore, reference to the bid and proposal should be deleted from section 18-59(c). Firms are already adequately prevented from changing their bids and proposals during the period when bids and proposals are solicited. The item revises section 18-59(c) accordingly. The proposed ordinance is **Attachment 5**, ORDINANCE TO DELETE REFERENCES TO BIDS AND PROPOSALS FROM THE POST-BID PHASE PORTION OF THE EQUAL BUSINESS OPPORTUNITY PROGRAM ORDINANCE.
- 6) This item corrects cross-references in City Code section 34-49. The proposed ordinance is **Attachment 6**, ORDINANCE TO CORRECT CROSS-REFERENCES IN CITY CODE SECTION 34-49.
- 7) The City Code prohibits hitting golf balls on public parks and playgrounds. Now that the City owns the Hillandale Golf Course, that provision needs to be changed. This revision keeps in effect the general prohibition but allows the administration to make exceptions for locations that it specifies. This ordinance amends City Code section 38-9. The proposed ordinance is **Attachment 7**, ORDINANCE TO ALLOW HITTING GOLF BALLS ON CITY PARKS AND PLAYGROUNDS EXCEPT WHERE DESIGNATED OTHERWISE.
- 8) City Code section 38-20 sets certain fees for use of Twin Lakes Park, but fees are now set by the Fee Schedule. The same section also limits use of motorized boats on Twin Lakes, but the use of motorized boats on Lake Michie and Little River Lake is already addressed elsewhere in the City Code. The proposed ordinance repeals those provisions but provides for use of motorized boats on other lakes owned by the City. The proposed ordinance is **Attachment 8**, ORDINANCE REVISING CITY CODE PROVISION REGARDING USE OF MOTORIZED BOATS ON LAKES OWNED BY THE CITY AND REPEALING A PROVISION REGARDING FEES IN TWIN LAKES PARK.

- 9) With proper permits, alcoholic beverages may be consumed on CCB Plaza, but the description of CCB Plaza names the street incorrectly. The revision to City Code section 38-21(c) will correct that. The proposed ordinance is **Attachment 9**, ORDINANCE TO CORRECT THE DEFINITION OF CCB PLAZA AS A LOCATION WHERE ALCOHOLIC BEVERAGES MAY BE CONSUMED.
- 10) City Code section 42-7(b) converts excess accrued vacation time to sick leave. By error, the number of hours for sworn firefighters was written in the existing code as 330 but the number of hours intended by the administration was 360. The ordinance to change City Code section 42-7(b) revises the number to 360. The proposed ordinance is **Attachment 10**, ORDINANCE TO REVISE CITY CODE SECTION 42-7(b) REGARDING CONVERSION OF SWORN FIREFIGHTERS' ACCRUED VACATION TIME TO SICK LEAVE.
- 11) City Code section 50-454 requires a watchman at the Randolph Street railroad crossing. This section is obsolete for several reasons, including that the location described, formerly Randolph Street but now Fernway Avenue, has an inactive rail line, also known as the Durham Beltline, that has inactive automated rail crossing signals. This ordinance repeals section 50-454. The proposed ordinance is **Attachment 11**, ORDINANCE TO REPEAL REQUIREMENT THAT RAILWAY COMPANY DISPLAY A SIGN ON RANDOLPH STREET ON THE APPROACH OF A TRAIN.
- 12) On November 5, 2012 the City Council adopted the Ordinance to Amend the City Code Regarding Regulation of Street Vending and Special-Event Permits. Because of the way the ordinance was written, one could raise the question whether City Code section 54-139 as shown in the November 5 ordinance was being repealed. This ordinance will clarify that section 54-139 was revised as shown in the November 5 ordinance. The proposed ordinance is **Attachment 12**, ORDINANCE TO CLARIFY THE ORDINANCE TO AMEND THE CITY CODE REGARDING REGULATION OF STREET VENDING AND SPECIAL-EVENT PERMITS.
- 13) City Code Section 66-173 prohibits on-street parking "in a space not exceeding 40 feet in front of the religious facility" beginning 30 minutes before a religious service and during the service. This section should be repealed for several reasons. First, by speaking in terms of an area "not exceeding 40 feet," it does not actually prohibit parking because that phrase describes any distance up to and including 40 feet. In other words, the section may do nothing at all. Assuming that the section does anything, the City departments that would be involved in applying or enforcing it have not been doing so. Second, it may not be necessarily desirable to prohibit all parking in front of religious facilities before and during religious services. Third, by virtue of another provision in the City Code, which was adopted years after section 66-173 was adopted, the City Manager has authority to limit parking in front of religious facilities or elsewhere as the need arise. This item repeals section 66-173. The proposed ordinance is **Attachment 13**, ORDINANCE TO REPEAL CITY CODE SECTION 66-173, WHICH PERTAINS TO PARKING IN FRONT OF RELIGIOUS FACILITIES.
- 14) In City Code section 66-375(e), the word counsel is misspelled. This item corrects the spelling. The proposed ordinance is **Attachment 14**, ORDINANCE TO CORRECT ERRONEOUS SPELLING OF COUNSEL IN SECTION 66-375(e).
- 15) On June 20, 2011 the City Council adopted a cross-connection control ordinance, as city code sections 70-578 to 70-593. By staff error, the definitions of "double check detector assembly"

and “reduced pressure detector assembly” were incorrect. This item corrects the definitions in section 70-758. The proposed ordinance is **Attachment 15, ORDINANCE TO CORRECT THE DEFINITIONS OF DOUBLE CHECK DETECTOR ASSEMBLY AND REDUCED PRESSURE DETECTOR ASSEMBLY IN CITY CODE SECTION 70-758 IN THE CROSS-CONNECTION CONTROL ORDINANCE.**

16) Article X of the Chapter 70 City Code, Stormwater Performance Standards for Development, uses the terms “load” and “loading rate” interchangeably. However, they are not synonymous. Loads are calculated from the loading rates. Making this and other clarifying changes to the ordinance will help ensure that they are applied as intended. This item changes City Code sections 70-740(a) – (c) and section 70-741(a). The proposed ordinance is **Attachment 16, ORDINANCE TO CLARIFY SECTIONS 70-740 AND 70-441 OF THE ORDINANCE PERTAINING TO STORMWATER PERFORMANCE STANDARDS FOR DEVELOPMENT.**

17) Sometimes ordinances are written with an understanding that underlining means that underlined material is being added to an existing ordinance, and that ~~struck~~ material is being deleted. For those understandings to be valid, it is best if the Council sets them out. The rules can be inserted into each ordinance, but time and effort can be saved by stating them in the City Code. The proposed ordinance places the rule in a new City Code section 1-15. The proposed ordinance is **Attachment 17, ORDINANCE TO PROVIDE A RULE OF CONSTRUCTION THAT UNDERLINED MATERIAL IN ORDINANCES IS BEING ADDED AND THAT STRUCK MATERIAL IS BEING DELETED.**

Alternatives

None identified

Financial Impacts

None

SDBE Summary

Not applicable

Attachments

All seventeen attachments are listed in **Issues and Analysis** portion of this memo.